

Served March 18, 1999



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 18th day of March, 1999

Application of

WRANGELL MOUNTAIN AIR, INC.

for a certificate of public convenience and necessity under 49
U.S.C. 41102 to engage in interstate scheduled air
transportation of persons, property and mail

Docket OST-99-5010

**ORDER TO SHOW CAUSE
PROPOSING ISSUANCE OF CERTIFICATE AUTHORITY**

Summary

By this order, we tentatively find that Wrangell Mountain Air, Inc., is a citizen of the United States and is fit, willing, and able to provide interstate scheduled air transportation of persons, property, and mail and should be issued a certificate of public convenience and necessity for such operations.

Background

Section 41102 of Title 49 of the United States Code (Transportation) ("the Statute") directs us to determine whether applicants for certificate authority to provide interstate scheduled air transportation are "fit, willing, and able" to perform such transportation, and to comply with the Statute and the regulations of the Department. In making fitness findings, the Department uses a three-part test that reconciles the Airline Deregulation Act's liberal entry policy with Congress's concern for operational safety and consumer protection. The three areas of inquiry that must be addressed in order to determine a company's fitness are whether the applicant (1) will have the managerial skills and technical ability to conduct the proposed operations, (2) will have access to resources sufficient to commence operations without posing an undue risk to consumers, and (3)

will comply with the Statute and regulations imposed by Federal and State agencies. We must also find that the applicant is a U.S. citizen.

On January 15, 1999, Wrangell Mountain Air, Inc., of Glennallen, Alaska, a registered air taxi operator, filed an application in Docket OST-99-5010 for a certificate to provide interstate scheduled air transportation of persons, property and mail pursuant to section 41102 of the Statute. Wrangell accompanied its application with the fitness information required by section 204.3 of our regulations. If its application is approved, Wrangell intends to provide twice daily scheduled passenger service between its operations base at McCarthy, Alaska, and Chitina, Alaska, with a five-passenger Cessna 206 aircraft.

No answers have been received to Wrangell's application, and no other issues regarding the applicant have come to our attention. Under these circumstances, we propose to decide the issue of the applicant's fitness on the basis of the written record, and we tentatively conclude that Wrangell is a U.S. citizen and is fit, willing, and able to operate its proposed interstate scheduled passenger service. However, we will give interested persons an opportunity to show cause why we should not adopt as final the tentative findings and conclusions stated herein.

The Company

Wrangell was organized as an Alaska corporation in 1992 as a successor to Wrangell Mountain Aviation, a sole proprietorship formed in 1990 by Mr. Kelly M. Bay. The applicant, which is owned by Mr. Bay (75 percent) and his wife, Mrs. Natalie Bay (25 percent), began as a single pilot, single-aircraft, on-demand operation and grew to become a multi-pilot "basic operator" under Part 135 of the Federal Aviation Regulations. Wrangell has been engaged principally in providing seasonal air transportation (April-October) for visitors and National Park Service employees between McCarthy, a town located in Alaska's Wrangell-St. Elias National Park, and Chitina, Alaska, which is approximately 60 miles (30 minutes) distant by air. The carrier is registered with the Department as an air taxi operator under Part 298 of our rules (14 CFR Part 298), and holds a license from the Canadian government to operate seasonal on-demand flights between Alaska and Canada. Wrangell presently owns a fleet of five Cessna and Piper aircraft seating up to five passengers; one of these aircraft, a five-passenger Cessna 206, will be used in the proposed certificated air carrier operations.

Managerial Competence

Mr. Kelly Bay holds the positions of President, Treasurer, General Manager, and Director of Operations. He has a Commercial Pilot Certificate from the FAA and over 7,000 hours of flight time. Mr. Bay, who has been flying commercially in Alaska for 15 years, began in 1984 providing air transportation for salmon purchasers and the Katmai Guide Service in Bristol Bay and the Wrangell Mountains. He and a partner established McCarthy Air in 1988, which they operated as an air taxi until the partnership dissolved in 1990, at which time Mr. Bay formed Wrangell Mountain Aviation, a sole-proprietorship. He flew his own aircraft under charter for Peninsula Airways at King Salmon, Alaska, while continuing to provide air transportation for Katmai Guide Service. Mr. Bay incorporated the air taxi operation in 1992 and has continued providing air taxi

operations with five aircraft, three pilots, three office staff, and three drivers for the company's shuttle bus service.

Mrs. Natalie Bay serves the carrier as its Corporate Secretary, Office Manager, and Chief Pilot. She also holds an FAA-issued Commercial Pilot Certificate, and has logged over 6,000 flight hours. Mrs. Bay, an Australian citizen, flew for six years for Tillair, a large regional air carrier in Australia's Northern Territory; for Trans North, an Australian charter carrier; and for two Australian mining companies, Petrocarb and Plenty River Mining, in Alice Springs. After moving to Alaska in 1984, she flew for salmon buyers in King Salmon and worked as a pilot for Katmai Guide Service, Air McCarthy (Chief Pilot), Gulf Air in Yakutat, and Pen Air in King Salmon. Mrs. Bay assumed her present positions at Wrangell in 1992.

Mr. David H. Mersereau recently accepted the positions of Vice President of Wrangell and member of its board of directors. Mr. Mersereau is an attorney in Anchorage specializing in commercial and aviation law. He moved to Alaska after finishing law school in 1981 and has been a legal adviser to Wrangell since 1991. He also has served as a Captain in the Civil Air Patrol, flown provisions to participants along the route of the Iditarod dog sled race, and worked as a missionary pilot for the Episcopal Bishop of Alaska.

Mr. Kenneth Ward Simonis has been Wrangell's Director of Maintenance since 1997, although he has been maintaining aircraft for companies operated by Mr. Bay since 1988 when Mr. Simonis formed Ward Aero Services, an FAA-certified Repair Station. Previously, Mr. Simonis worked as an aircraft mechanic for 11 years with H. and H. Flying Service in Redding, California, and Johnson's Air Repair and Maintenance in Anchorage. He holds a Private Pilot License and an Airframe and Powerplant Mechanic Certificate with an Inspection Authorization from the FAA. Mr. Simonis anticipates that approximately 15 percent of his work at Ward Aero Services will be spent on maintenance and inspection work for Wrangell.

In view of the experience and background of the applicant's key personnel, we tentatively conclude that Wrangell has demonstrated that it has management and key technical supervisors who have the managerial skills and technical ability to conduct its proposed limited scheduled service.¹

Financial Plan and Operating Proposal

If granted the certificate authority it seeks, Wrangell intends to provide two scheduled round-trip flights daily from May 15 to September 15 between its McCarthy operating base in the Wrangell-St. Elias National Park and Chitina, Alaska, approximately 60 miles or 30 minutes distant by air, using a Cessna 206 aircraft with five passenger seats. In addition, the carrier will continue

¹ Before authorizing a carrier to conduct air transportation operations, the FAA also evaluates certain of the carrier's key personnel with respect to the minimum qualifications for those positions as prescribed in the Federal Aviation Regulations. The FAA's evaluation of these key personnel provides an added practical and in-person test of the skills and technical ability of these individuals. In this instance, the FAA has advised us that it has found all of Wrangell's key personnel qualified to hold their respective positions.

providing on-demand passenger flights between April and October each year. Scheduled maintenance for the carrier's aircraft will continue to be provided by Ward Aero Services in Anchorage, while unscheduled maintenance will be performed at McCarthy.

Wrangell furnished its operational and financial projections for its 1999 fiscal year (December 1998 through November 1999) based on its historical operating experience. The applicant's forecast income statement covering its entire operation (including on-demand flights) shows that it anticipates earning total operating revenues of \$390,000 during the April-October 1999 season, against which will be offset total operating expenses of \$337,700. Wrangell separately provided data related to its proposed scheduled service, including flight schedules, fares, block hours, enplanements, projected revenues, and operating costs per flight hour. The applicant anticipates receiving revenues from scheduled service of approximately \$60,700 over the four-month operational period, and has estimated that scheduled operating costs, including a proportional allocation of total general and administrative expenses, will approximate \$55,900. Thus, it appears that the scheduled service is expected to constitute about 15 percent of Wrangell's total operations. The carrier does not anticipate any material pre-operating expenses since it has the aircraft, personnel, and other resources necessary for the proposed scheduled service. We have reviewed the applicant's projections and find them to be reasonable in view of the extremely limited scope of the proposed scheduled operations. Based on our analysis of its forecasts, we conclude that Wrangell will need access to at least \$14,000 to meet our financial fitness criteria.²

Operating capital to support the scheduled service will come from Wrangell's own resources. As evidence of its financial condition, the applicant provided copies of its financial statements, as compiled by its accountant, and its federal corporate income tax returns for its 1996, 1997, and 1998 fiscal years. Wrangell's historical income statements indicate that its profitability has improved steadily over the past three years. It suffered operating and net losses in 1996, but recorded operating profits in 1997 and 1998 of \$10,999 and \$44,858, respectively, and a net profit in 1998 of \$27,540. Its balance sheet dated November 30, 1998, reflected current assets of \$139,553, current liabilities of \$132,305 (yielding a current ratio of 1.05:1), long-term debt of \$73,926, and stockholders' equity of \$51,324, including retained earnings of \$34,431. Wrangell also filed statements from its financial institutions confirming that, as of December 29, 1998, it had liquid assets totaling \$139,109.

In consideration of the foregoing, we tentatively conclude that Wrangell will have sufficient financial resources available to enable it to institute its proposed scheduled passenger operations without posing an undue risk to consumers or their funds.

² This amount is approximately one-fourth of the applicant's projected total first-year scheduled operating costs of \$55,886. In evaluating an applicant's financial fitness, the Department generally asks that the company have available to it resources sufficient to cover any pre-operating costs plus a working capital reserve equal to the operating costs that would be incurred in three months of normal certificated operations. Because projected expenses during one or more of the first several months of service frequently do not include all costs of operations that will be incurred during a normal period of operations, it is our practice to base our three-month test on one quarter of the first year's operating cost forecast. In calculating available resources, projected revenues may not be used.

Compliance Disposition

Wrangell stated that there are no actions or outstanding judgments against it or any of its owners or key personnel, and that there are no pending investigations, enforcement actions, or formal complaints that have been brought by the Department, including the FAA, involving the carrier or any of its owners or key personnel with respect to compliance with the Statute or any orders, rules, or requirements issued pursuant to the Statute. Wrangell also maintained that there had been no charges of unfair or deceptive or anticompetitive business practices, or of fraud, felony or antitrust violation brought against it, its owners or its key personnel, and that there had been no aircraft accidents or incidents involving Wrangell, its owners or key personnel that had occurred in the past year or that were still under investigation.

Our search of the Department's records found no compliance problems with Wrangell or its key personnel. FAA records indicate that the carrier has been the subject of only one enforcement case, in which Wrangell was issued a Letter of Correction in 1995 for discrepancies in the establishment of its employee drug testing program. Mr. Simonis, the Director of Maintenance, was issued a Warning Letter in February 1998 in connection with an alleged deviation from an air traffic control clearance.

FAA records reflect no accidents or incidents recorded against Wrangell, although Mr. and Mrs. Bay and Mr. Mersereau each experienced an aircraft accident. In landing a charter flight on a glacier strip in 1993, Mr. Bay's aircraft nosed over due to a rough surface on the landing strip and over-braking. In 1991, Mrs. Bay experienced a downdraft on final approach at Naknek, Alaska, resulting in the aircraft impacting the ground short of the runway, skidding to the side and rolling over. In 1985, a DC-7 piloted by Mr. Mersereau stalled 20 feet above the runway, resulting in a hard landing and damage to the wing, fuselage and landing gear. No injuries or enforcement actions were involved in any of these instances.

Our inquiries of the FAA disclosed that Wrangell holds a Part 135 Air Carrier Certificate and Operations Specifications authorizing Part 135 air carrier operations, which will be amended to authorize scheduled passenger operations if Wrangell receives the section 41102 certification it seeks. The FAA also advised us that it has been satisfied with Wrangell's compliance and safety and that it has found all of the carrier's key personnel qualified to hold their respective positions.

In light of these circumstances, we tentatively conclude that Wrangell will have the proper regard for the laws and regulations governing its services to ensure that its aircraft and personnel conform to applicable safety standards and that acceptable consumer relations practices will be followed.

CITIZENSHIP

Section 41102 requires that certificates to engage in air transportation be held only by citizens of the United States as defined in 49 U.S.C. 40102(a)(15). That section requires that the president and two-thirds of the board of directors and other managing officers be U.S. citizens and that at least 75 percent of the outstanding voting stock be owned by U.S. citizens. We have also interpreted the statute to mean that, as a factual matter, the carrier must actually be controlled by U.S. citizens.

Wrangell is a corporation organized under the laws of the State of Alaska. It has provided an affidavit attesting that it is a citizen of the United States within the meaning of the Statute and that it is actually controlled by U.S. citizens. The applicant has declared that 75 percent of its voting stock is owned by Mr. Kelly M. Bay, a U.S. citizen, and that the remaining 25 percent of the voting stock is owned by his wife, Mrs. Natalie Bay, a citizen of Australia. The carrier's board of directors is composed of three individuals, two of whom are U.S. citizens (Messrs. Bay and Mersereau), and two out of three of the individuals holding positions as officers with the carrier, including the President, are U.S. citizens, *i.e.*, Mr. Bay (President) and Mr. Mersereau (Vice President).

In support of its contention that it meets the Department's U.S. citizenship requirements, Wrangell has confirmed that (1) Mrs. Bay has no supermajority voting power, block voting power or veto power associated with the ownership of her shares in Wrangell; (2) no shareholder agreements exist entitling Mrs. Bay to any rights beyond those of a 25-percent stockholder; (3) Mrs. Bay is not a debtholder of Wrangell so as to enable her to exercise control over the carrier; (4) the funding to form the business did not originate with Mrs. Bay or her family, but from the marital estate of Mr. and Mrs. Bay; (5) Wrangell has no foreign debt or foreign lines-of-credit in place or planned; and (6) no debt is owed to Mrs. Bay's family or to any foreign person. In addition, we have reviewed the applicant's certificate and articles of incorporation and corporate bylaws, which contain no provisions that would grant any stockholder, director, or officer any extraordinary voting rights or powers. Moreover, we have found nothing in the record to suggest that control of Wrangell rests with non-U.S. citizens.

Based on the above, we tentatively conclude that Wrangell is a citizen of the United States and is fit, willing, and able to conduct the interstate scheduled passenger operations proposed in its application.

OBJECTIONS

We will give interested persons 14 calendar days following the service date of this order to show cause why the tentative findings and conclusions set forth here should not be made final; answers to objections will be due within 7 calendar days thereafter. We expect such persons to direct their objections, if any, to the application and points at issue and to support such objections with

detailed economic analyses.³ We will not entertain general, vague, or unsupported objections. If no substantive objections are filed, we will issue an order that will make final our tentative findings and conclusions with respect to Wrangell's fitness and certification, and will issue a certificate that will contain an exact copy of the attached Terms, Conditions, and Limitations.

CERTIFICATE CONDITIONS AND LIMITATIONS

If Wrangell is found fit and issued the certificate it seeks, its authority will not become effective until the company has fulfilled all requirements for effectiveness as set forth in the terms and conditions attached to its certificate. Among other things, this includes our receipt of evidence that Wrangell has been certified by the FAA to engage in the subject operations, a fully executed OST Form 6410 evidencing liability insurance coverage that meets the requirements of section 205.5(b) of our rules, and a statement of any changes it may have undergone since its fitness was examined.

Furthermore, we remind Wrangell of the requirements of 49 U.S.C. 41110(e). Specifically, that section requires that, once a carrier is found fit initially, it must remain fit in order to hold its authority. To be assured that certificated air carriers continue to be fit after effective authority has been issued to them, we require that they supply information describing any subsequent substantial changes they may undergo in areas affecting fitness.

Our tentative findings stated above are based on an operating plan wherein Wrangell would utilize small (*i.e.*, less than 10-passenger) aircraft. These findings might no longer apply if the company were to substantially change the scope or nature of its operations through the introduction of larger aircraft. Therefore, once the applicant's certificate becomes effective, should Wrangell propose to acquire and operate aircraft having 10 seats or more, it must notify the Department in writing and demonstrate its fitness for such operations prior to implementing service with any additional aircraft. Furthermore, should Wrangell propose other substantial changes in its ownership, management, or operations, it must first comply with the

³ If an oral evidentiary hearing or discovery procedures are requested, the objector should state in detail why such a hearing or discovery is considered necessary, and what material issues of decisional fact the objector would expect to establish through a hearing or discovery that cannot be established in written pleadings. The objector should consider whether discovery procedures alone would be sufficient to resolve material issues of decisional fact. If so, the type of procedure should be specified (*See* Part 302, Rules 19 and 20); if not, the reasons why not should be explained.

requirements of section 204.5 of our rules.⁴ The compliance of the company with this requirement is essential if we are to carry out our responsibilities under section 41110(e).⁵

To aid the Department in its responsibility to monitor the fitness of new carriers, we have adopted a requirement that all start-up carriers must submit a detailed progress report, within 45 days following the end of the first year of actual flight operations, to the Air Carrier Fitness Division. The report should include a description of the carrier's current operations (number and type of aircraft, principal markets served, total number of full-time and part-time employees), a summary of how its operations have changed during the year, a discussion of any changes it anticipates from its current operations during its second year, current financial statements,⁶ and a listing of current senior management and key technical personnel. The carrier should also be prepared to meet with staff members of the Fitness Division to discuss its current and future operations.

ACCORDINGLY,

1. We direct all interested persons to show cause why we should not issue an order making final the tentative findings and conclusions stated above and award a certificate to Wrangell Mountain Air, Inc., authorizing it to engage in interstate scheduled air transportation of persons, property and mail, subject to the attached specimen Terms, Conditions, and Limitations.

2. We direct any interested persons having objections to the issuance of an order making final any of the proposed findings, conclusions, or the certificate award set forth here to file them with Department of Transportation Dockets, 400 Seventh Street, SW, Room PL-401, Washington, D.C. 20590, in Docket OST-99-5010, and serve them upon all persons listed in Attachment A no later than 14 calendar days after the service date of this order; answers to objections shall be filed no later than 7 calendar days thereafter.

⁴ Wrangell may contact our Air Carrier Fitness Division to report proposed substantial changes in its operations, ownership or management, and to determine what additional information, if any, will be required under section 204.5. In addition, by notice dated July 21, 1998, the Department requested air carriers to provide a 30-day advance notification of any proposed change in ownership, restructuring, or recapitalization. If the carrier fails to file the information or if the information fails to demonstrate that the carrier will continue to be fit upon implementation of the substantial change, the Department may take such action as is appropriate, including enforcement action or steps to modify, suspend, or revoke the carrier's certificate authority.

⁵ We also remind Wrangell about the requirements of section 204.7 of our rules. This section provides, among other things, that (1) the certificate authority granted to a company shall be revoked if the company does not commence actual flying operations under that authority within one year of the date of the Department's determination of its fitness; (2) if the company commences operations for which it was found fit and subsequently ceases such operations, it may not resume certificated operations unless its fitness has been redetermined; and (3) if the company does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

⁶ These financial statements should include a balance sheet as of the end of the company's first full year of actual flight operations and a twelve-month income statement ending that same date.

3. If timely and properly supported objections are filed, we will accord full consideration to the matters or issues raised by the objections before we take further action.⁷
4. In the event that no objections are filed, we will consider all further procedural steps to be waived and we will enter an order making final our tentative findings and conclusions.
5. We will serve a copy of this order on the persons listed in Attachment A.
6. We will publish a summary of this order in the Federal Register.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

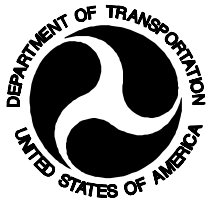
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*An electronic version of this document is available on the World Wide Web at:
http://dms.dot.gov/reports/reports_aviation.asp*

⁷ Since we have provided for the filing of objections to this order, we will not entertain petitions for reconsideration.

SPECIMEN

Attachment



Terms, Conditions, and Limitations

WRANGELL MOUNTAIN AIR, INC.

is authorized to engage in interstate air transportation of persons, property, and mail between any point in any State, territory, or possession of the United States or the District of Columbia, and any other point in any of those entities.

This authority is subject to the following provisions:

- (1) The authority to operate under this certificate will not become effective until six (business) days after the Department has received the following documents; provided, however, that the Department may stay the effectiveness of this authority at any time prior to that date:
 - (a) A copy of the holder's Air Carrier Certificate and Operations Specifications authorizing such operations from the Federal Aviation Administration (FAA).
 - (b) A certificate of insurance on OST Form 6410 evidencing liability insurance coverage meeting the requirements of 14 CFR 205.5(b) for all of its aircraft.
 - (c) A statement of any changes the holder has undergone in its ownership, key personnel, operating plans, financial posture, or compliance history, since the date of the Show Cause Order in this case.
- (2) Pending receipt of effective authority, the holder may not accept payment of any kind (i.e., cash, check, or credit card) or issue tickets for the operations proposed under this certificate, and any advertisement or listing of flights by the holder must prominently state: "This service is subject to receipt of government operating authority."
- (3) The holder shall at all times conduct its operations in accordance with the regulations prescribed by the Department of Transportation for the services authorized by this certificate, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.
- (4) The holder's authority is effective only to the extent that such operations are also authorized by the FAA.

(5) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).

(6) The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render a certificate ineffective, and this or other failure to comply with the provisions of Subtitle VII of Title 49 of the United States Code or the Department's regulations shall be sufficient grounds to revoke this certificate.

(7) In the event that the holder receives effective scheduled passenger authority, the following additional conditions will apply:

(a) The holder may reduce or terminate service at any point or between any two points, subject to compliance with the provisions of 49 U.S.C. 41734 and all orders and regulations issued by the Department of Transportation under that section.

(b) The holder may not provide scheduled passenger air transportation to or from Dallas (Love Field), Texas, except within the limits set forth in section 29 of the International Air Transportation Competition Act of 1979, as amended by section 337 of the Department of Transportation and Related Agencies Appropriations Act, 1998.

(8) The holder may not operate aircraft designed to have a maximum passenger capacity of more than nine (9) seats. In the event that the holder wishes to institute operations with aircraft having a larger capacity, it must first be determined fit for such operations.

(9) Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(n)), it must first comply with the requirements of 14 CFR 204.5.

(10) In the event that the holder does not commence actual flying operations under this certificate within one year of the date of the Department's determination of its fitness, its authority shall be revoked for dormancy. Further, in the event that the holder commences operations for which it was found "fit, willing, and able" and subsequently ceases all such operations, its authority under this certificate shall be suspended under the terms of 14 CFR 204.7 and the holder may neither recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department. Moreover, if the holder does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

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